



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Legislation (nomothesia)

Citation for published version:

Canevaro, M 2016, Legislation (nomothesia). in *Oxford Classical Dictionary*. Oxford University Press, Oxford. <https://doi.org/10.1093/acrefore/9780199381135.013.8020>

Digital Object Identifier (DOI):

[10.1093/acrefore/9780199381135.013.8020](https://doi.org/10.1093/acrefore/9780199381135.013.8020)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Oxford Classical Dictionary

Publisher Rights Statement:

The article is under the copyright of Oxford University Press.

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Legislation (*nomothesia*)
Mirko Canevaro (The University of Edinburgh)

SUMMARY

From the earliest stages the Greeks understood the distinction between legislation and day-to-day administration. They gave laws a special status and often created specific, separate procedures to enact them. In the Archaic period specially appointed lawgivers were normally in charge of giving laws to the *polis*, and these laws were intended to be immutable, and their stability secured through entrenchment clauses. Making laws was not considered to be among the normal tasks of the government of the *polis*, and there were no standard procedures to change the laws once these had been given. Legislation was produced nevertheless, through the enactments of the sovereign Assemblies, but it was tacit and it was not accepted that the ancient laws of the lawgivers could be changed. This gave rise to significant problems of legitimacy, and introduced inconsistencies in the legal system of the *polis*, a problem that we can observe in fifth-century BCE Athens, until, at the end of the fifth century, the Athenians introduced judicial review to vet new legislation and avoid the introduction of inconsistencies, performed a revision of the laws of the city, and finally institutionalised a distinction between *nomoi* (laws: general permanent norms) and *psephismata* (decrees: *ad hoc* enactments). They also created a complex new procedure, involving a board of *nomothetai*, to allow the *demos* to make new laws and change the existing ones. Similar, yet not identical procedures are attested also outside Athens: Hellenistic kings often ordered the creation of special, one-off *nomothetai* or *nomographoi* to effect constitutional reform, and *nomographoi* or nomothetic lawcourts are attested in various city, with the task of ‘upgrading’ decrees of the *demos* into laws, and enter them among the laws of the city.

KEYWORDS

legal change, *nomothesia*, *graphe paranomon*, Solon, judicial review, entrenchment clauses, *nomos*, *psephisma*

KEY LOCATIONS

Athens, Magnesia, Dreros, Corcyra, Cyrene, Teos, Chios

ESSAY

Archaic lawmaking in Athens and beyond

The first written law preserved from the Greek world comes from the Cretan *polis* of Dreros, and is dated to around 650 BCE.¹ Written laws are widely attested in Greece from the mid-seventh century BCE. This dating of the earliest written laws is confirmed by the literary tradition, which for many cities records (legendary) lawgivers (*nomothetai*) active from the mid-seventh century BCE (e.g. Arist. *Pol.* 1274a): the most ancient of the Greek lawgivers was allegedly *Zaleucus* of Epizephirian Locri, active ca. 650 BCE, and the first of Athens’ lawgivers was *Draco*, whose action is traditionally dated to 621 BCE. Of course, the Greeks had customary rules, substantive norms of behaviour and social organisation, and

connected procedures for judging inappropriate behaviour, before 650 BCE. These rules (often referred to in Homer as *themistes*) and procedures were oral in nature (see e.g. Hom. *Il.* 9.632–36 and the famous trial scene on Achilles' shield at Hom. *Il.* 19.497–508). Therefore, when the first laws were written down, we should not assume that this occurred in a vacuum, and that all the new laws would have covered areas previously unregulated. Lawmaking surely involved creating new norms, but it is likely that a large portion of it had to do with making clear, accessible and fixed what the law actually was.ⁱⁱ

The inscriptional evidence suggests that, normally, written laws were individual enactments that covered one specific area. They certainly did not form a comprehensive 'lawcode' or constitute instances of 'codification'.ⁱⁱⁱ This however, does not mean that they were just *ad hoc* enactments dealing with specific crises and with no overarching principles behind them.^{iv} First, it is possible to find in archaic legislation, throughout the Greek world, both in the poetry of Solon and in many archaic laws preserved epigraphically, an overarching concern with preventing tyranny and the concentration of power in few hands (which is strikingly different from the image of lawgiving provided in Near-Eastern sources). The Greeks created laws that distributed powers and prerogatives among various boards of officials, political bodies, and sections of the population: Solon distributed powers and prerogatives among four property classes ([Arist.] *Ath. Pol.* 7.3–4); a law from Chios (Koerner 1993, no. 61) grants different duties and responsibilities to various bodies and officials (cf. also Koerner 1993, no. 39, 74, 87). Archaic laws also establish term-limits for magistrates (Koerner 1993, no. 77, 90, 121), impose penalties for magistrates that do not uphold the law (Koerner 1993, no. 31, 41), and often assign powers not to an individual but to a board to avoid its concentration.^v How widespread this concern is Archaic legislation shows that Archaic laws did not simply provide *ad hoc* solutions, but enforced wider substantive principles.

Second, Solon's legislation and the very existence of the *Gortyn Code* are evidence of extensive legislative efforts (involving both collecting and creating laws on a variety of matters) that cannot be explained in terms of piecemeal legislation to meet contingent needs. The laws of Solon mentioned at Plut. *Sol.* 20–4 include laws on neutrality, *epikleroi*, dowries, speaking ill of the dead and (in some contexts) the living, bequests, funerals, learning a trade and the obligation of sons to support their fathers, adultery, sacrificial victims, wells and the planting of trees, the export of agricultural products, injuries inflicted by animals, grants of citizenship to immigrants, public meals in the *prytaneion*.^{vi} These are only a fraction of the laws that Solon must have enacted, and when such a body of law was produced, the aim must have been 'not to solve a particular problem but to make available over a range of issues a statement of what the law was and how it was to be enforced'.^{vii}

The Greeks had a number of words to indicate a law: *thesmos* (from *tithemi*, with a focus on the laying down of the law); *graphos* and *rhētra* (with a focus on its written or oral nature); *nomos* (connected with *nemein*, 'to distribute', 'to allocate'); and *psephisma* (normally translated as 'decree', referring to the act of voting with a *psephos*). Despite the different nuances of meaning, these terms could more or less be used interchangeably, and no one term was reserved to describing a general rule of permanent validity (what would later be called a *nomos*) as opposed to an *ad hoc* enactment part of day-to-day administration. And nevertheless, when legislation proper was produced (general rules meant to regulate individual behaviour and the organisation of the community), this was not conceived of as part of the normal business of the *polis*. The lawgivers of tradition were often outsiders, or became

outsiders (and left) once their legislative activity was completed (cf. [Arist.] *Ath. Pol.* 7.3–4): Philolaus, the lawgiver of Thebes, was a Corinthian exile; Androdamas of Rhegium gave laws to the Chalcidians in Thrace; Solon left Athens for ten years.^{viii} Legislation was a special activity and lawgivers were given special powers. Their condition of outsiders, or the need for them to leave and let the city administer independently their laws, was meant to avoid the formation of tyranny. It was also meant (explicitly in the case of Solon: [Arist.] *Ath. Pol.* 7.2 and Plut. *Sol.* 25) to secure the stability of the laws and make sure that they could not be changed or repealed. This was a key concern of Archaic legislation, which was expressed with ‘entrenchment clauses’: clauses that prescribed curses and terrible penalties for whoever deleted or changed a given law (e.g. van Effenterre-Ruzé 1994-5, no. 44, 100).^{ix} Similar rules are attested also in the literary record about the legendary lawgivers: Diod. Sic. 12.17 reports for instance that Charondas stipulated that whoever wanted to propose a revision of one of the existing laws should do so with his neck in a noose, and if the proposal were unsuccessful he should be hanged (cf. Dem. 24.139-41; Polyb. 12.16.9-14). These stories, although late and probably apocryphal, are confirmed in their wider meaning by the epigraphic evidence, and reveal that the Greeks, in the Archaic as well as in the Classical period, viewed legislation as a *una tantum* process accomplished by authoritative lawgivers who wrote down the laws forever, never to be annulled or changed. Their attitude is summarized by a passage in which the Anonymous of Iamblicus (*Vit. Pit.* 256), borrowing the formulation from the *Pythagorical Sentences* of Aristoxenus, states that the Pythagoreans ‘considered just to stay faithful to the ancestral customs and norms, even if slightly inferior to those of others, because to abandon easily the existing laws and to be inclined to introduce innovations would be neither convenient nor useful’.^x Athens was no different, and Dem. 23.62 reports the entrenchment clause of Draco’s homicide law. As for Solon, although there is no evidence of entrenchment clauses for his legislation, both [Arist.] *Ath. Pol.* 7.2 and Plut. *Sol.* 25 inform us that he bound the Athenians to keep to his laws by making them swear an oath (apparently in advance: Hdt. 1.29.2). Solon therefore effectively entrenched his laws, and later Athenians understood his intention as such. Solon moreover was asked, and elected by the Athenians, to give them laws, and there is no sign that they approved his laws afterwards. The authority of the laws derived from the authoritative action of the *nomothetes*. This conception of the authoritative lawgiver had important consequences. The Athenians, as early as the fifth century BCE, saw Draco and Solon as the authors of their laws (e.g. Cratinus dr. 274 Kock; Ar. *Nub.* 1187; Av. 1660). Because of this, they had an institutionalized understanding that the laws should not be changed; viewed them as separate from the day-to-day administration of the *polis*, and therefore outside the scope of the action of the normal governmental bodies; they saw them as the province of specially appointed *nomothetai* acting at special times; finally, despite the fact that Solon’s laws were not strictly speaking a ‘code’, the Athenians understood them as part of system, the product of a unified rationality, and therefore consistent and coherent (see e.g. Antiph. 5.14-15, 6.2; Ar. *Nub.* 1187; Aesch. *Eum.* 690-5, 1113-14).

The reforms of late fifth-century BCE Athens

Throughout the fifth century, the Athenians progressively came to realise that, despite their ideas about the immutability of the laws, legislation was necessary and was in fact enacted in the Assembly, as part of the normal business, even in the absence of

legitimate procedures for normal legislation (e.g. [Arist.] *Ath. Pol.* 22.1, 22.5, 26.2, 26.4, 47.1). These enactments however were not recognised as on the same level as those of Solon, and the Athenians did not accept that many of them in fact contradicted the laws of Solon.^{xi} They still believed that the laws of Solon were unchangeable and unchanged, despite the fact that their day-to-day activity in the Assembly introduced new rules that sometimes tacitly contradicted the ancestral laws. The result of such legislation was that the laws became progressively inconsistent, and liable to charges of illegitimacy by anti-democrats. In the last years of the fifth century the Athenians attempted to deal with these problems. The first procedure they created for this purpose was the *graphe paranomon*, a public action against illegal decrees. We know only a few cases of this procedure before the fourth century BCE – the earliest evidence is Andoc. 1.17, 22, who refers to a successful *graphe paranomon* brought in 415 by Leagoras of Cydathenaeum against Speusippus for a decree enacted by the Council.

The basic procedural steps in the fifth century BCE were the following: 1) during the discussion of a proposal or after it had been approved (Xen. *Hell.* 1.7.12-14; Dem. 22.5, 9-10) anyone among the Athenians could indict the bill for being *paranomon*; 2) the accuser had to swear that the decree was illegal (*hypomosia*) and later 3) present a written text to the *thesmothetai* explaining why the decree was illegal, citing as supporting evidence the statutes that prove that it is illegal; 4) if one dropped the case after the *hypomosia* he was fined 1,000 drachmas and was forbidden to bring any public actions in the future; 5) the same happened if the accuser failed to receive one fifth of the votes at the trial; 6) the case was judged by a panel of at least 500 judges and possibly as many as 6,000 (Andoc. 1.17); 7) if the accusation was successful, the decree was repealed if already enacted, or could not be enacted at all if it had been indicted before the vote in the Assembly; 8) if the proposal had not been approved by the Assembly before being indicted and the prosecution was unsuccessful, the proposal went back to the Assembly for approval; 9) if less than one year had elapsed since the presentation of the bill (Dem. 23.104), the proposer could be given any penalty from a small fine to death or full *atimia* (Hyp. *Eux.* 18; [Dem.] 58.1).^{xii}

In the fifth century, before the distinction between *nomoi* and *psephismata* was introduced (see below), the aim of the procedure was to provide for the repealing of new enactments that contradicted existing laws. It was a first attempt to secure the consistency of the laws of the city while accepting the legitimacy of the enactments of the *demos*. This procedure, however, had one important weakness: it could not deal with inconsistencies retroactively. Moreover, it was unacceptable to the oligarchs in the city that argued that only the laws enacted once and for all by special *nomothetai* were legitimate, and the enactments of the *demos* were not. Accordingly, in the course of their oligarchic revolutions, they styled themselves as special *nomothetai* or *syngrapheis autokratores* ([Arist.] *Ath. Pol.* 29.2; Thuc. 8.97.2) and attempted to eliminate the problem: the Thirty for instance took down from the Areopagus the laws of Ephialtes and Archestratus, and rescinded laws that gave rise to disagreements ([Arist.] *Ath. Pol.* 35.2); a provision of the ‘Constitution for the present’ discussed at [Arist.] *Ath. Pol.* 31.3 in connection with the Four Hundred (of 411) orders that a new Council of 400 must follow the new laws and will not be allowed to change them or enact others. Their action shows that that their model of lawmaking was the archaic one, and they rejected any authority of the *demos* to make laws.

Both restorations of democracy, in 410 and 403 BCE, also dealt with these issues, with more successful solutions.^{xiii} The restored democracy in 410 began the process of republishing the ‘laws of Solon’. The most important source for this procedure is

Lysias' *Against Nicomachus* (30.2-5), corroborated by the republished law of Draco (IG I³ 104). The speech attacks Nicomachus in his role as *anagrapheus* of the *nomoi*. His job (as member of a panel of *anagrapheis*) was finding the laws of the city (not just those of Solon), submitting them to the *demos* for approval or rejection, and then publishing them in front of the Stoa of the King (cf. Andoc. 1.81). The procedure, which was meant to last only four months, took six years, was interrupted by the Thirty, and resumed in 403/2 BCE, amounted to a total re-examination and re-approval of the laws by the *demos*.^{xiv} With it, the democrats claimed the laws of Draco and Solon for themselves against the oligarchic attempts to appropriate them. They also dealt for the first time retroactively with their inconsistencies. In doing this, they recognized that statutes from different periods (and not just those of Draco and Solon) can be valid, and confirmed their validity through a vote of the *demos*, which thereby affirmed its right to legislate.

This was however an *una tantum* procedure, which did not provide any rules of change for the future. In 403, after the overthrow of the Thirty and the restoration of democracy, the Athenians created such rules of change and placed the *nomoi* on a more solid legal foundation. The main source for these reforms is Andocides (1.81-9).^{xv} who states that after democracy was restored the Athenians elected a commission of twenty to govern the city until laws could be enacted, and established that until then the *thesmoi* of Draco and the *nomoi* of Solon were to be valid. Members of the Council were eventually selected by lot, and the Assembly elected *nomothetai*. Afterwards the Athenians also voted to resume the scrutiny of the laws. These were two separate procedures: one resumed the scrutiny and republication of the laws initiated in 410, the other appointed special *nomothetai*, with a role akin to that of Solon or Draco, to create new laws. Andocides (1.85-9) discusses some of the laws that these specially appointed *nomothetai* created: some of them dealt with the aftermath of the civil war, others with future legislation. One of them provides that 'it is not allowed for magistrates to use an unwritten (*agraphos*) *nomos* not even about a single matter' – a basic rule that orders public officials to perform their tasks following the instructions of the written laws of the city, and not according to custom or to other principles. Another provision states that 'no decree, neither of the Council nor of the Assembly, is to have more authority than a law'. This law introduces for the first time a clear-cut distinction between *nomoi* and *psephismata*, as well as hierarchy between the two: *nomoi* are higher rules that can overturn, but cannot be overturned by, *psephismata*. Once this rule was passed, the Athenians respected this distinction very strictly, and no longer used *nomos* and *psephisma* interchangeably (see below).^{xvi} Another provision (Andoc. 1.89; cf. Dem. 23.86, 218; 24.18, 59, 116, 188; [Dem.] 46.2) defines (negatively) what a *nomos* is: 'It is not permitted to enact a law directed against an individual unless the same law applies to all Athenians'.^{xvii} In accordance with the definitions we find in Arist. *Pol.* 1292a 32-7 and *Eth. Nic.* 1137b 13-14, this provision indicates that a *nomos* must have a general content and apply to all, whereas *psephismata* deal with particular cases. A further law (Dem. 24.42: the law of Diocles) defines from what time laws are to be in force, forbidding retroactive legislation and laying down the principle that laws are meant to be valid forever.^{xviii} Finally, the special *nomothetai* of 403 proceeded to institutionalize legal change by creating a complex procedure of *nomothesia* for *nomoi* (as opposed to *psephismata*) to be enacted and amended.^{xix} The main sources for this procedure are Dem. *Tim.* and *Lept.*, supplemented by Aeschin. 3.38-40 and a few inscriptions (see below).^{xx} The procedure worked as follows: 1) in order to introduce a new law, a *probouleuma* had to be approved by the Council, introducing a vote in the Assembly about whether new

laws could be proposed; 2) following the *probouleuma*, a preliminary vote in the Assembly, at any point of the year, had to be held that would allow new laws to be proposed (Dem. 24.25; *IG* II2 333, *IG* II3 320, *IG* II2 140); 3) once new proposals had been authorized by the Assembly, all new proposals had to be posted in front of the monument of the Eponymous Heroes (Dem. 24.25; 20.94), so that anybody could see them; 4) the proposals had to be read out by the secretary at each meeting of the Assembly until the appointment of the *nomothetai*, to allow everyone to make up their minds (Dem. 20.94); 5) in the third meeting of the Assembly after the preliminary vote, on the basis of the proposals submitted, the people had to discuss the appointment (or summons) of *nomothetai* and pass a decree of appointment (or summons; Dem. 24.25; 20.92); 6) opposing laws however had to be repealed before the new laws could be enacted by the *nomothetai* (Dem. 24.32, 34–5; Dem. 20.93); 7) presumably at the same meeting of the Assembly that appointed the *nomothetai*, expert *synegoroi* (advocates) were elected to defend those laws whose repeal was necessary for enacting the new laws (Dem. 24.36; 20.146); 8) if the proposer of a new law violated any of these rules, anyone could bring him to trial through a *graphe nomon me epitedeion theinai* (a public charge for enacting an inexpedient law; Dem. 24.32), and if the case was heard within a year after the enactment of the law, the punishment could be anything the court decided, from a small fine to *atimia* or death. The creation of this procedure, of the new distinction between *nomoi* and *psephismata*, and of the *graphe nomon me epitedeion theinai*, also changed the scope of the old *graphe paranomon*. The two procedures were similar, but from this point on the *graphe paranomon* could no longer be used against any proposal, but only against new *psephismata* that were not consistent with one or more of the existing *nomoi*. Conversely, the *graphe nomon me epitedeion theinai* was concerned with *nomoi* that contradicted existing ones or had not been enacted following the correct procedures, and could be used both against new laws (either enacted or just proposed) or against old laws that needed to be repealed before a new law could be enacted by the *nomothetai*.

Athenian *nomothesia* in the fourth century BCE

Throughout the fourth century BCE, until Macedon's victory in the Lamian War, the Athenians strictly followed the new procedures for *nomothesia* created in the late fifth century BCE: general rules valid forever were normally enacted as *nomoi* by the *nomothetai* through the new *nomothesia* procedure; decrees were enacted by the Council or the Assembly.^{xxi} The distinction was enshrined in the enactment formulas of the prescripts: in *psephismata* we find formulas such as 'it was resolved / it should be resolved by the people / by the Council' (*edoxe / dedochthai toi demo / tei boulei*); in *nomoi* formulas such as 'it was resolved / it should be resolved by the *nomothetai*' (*edoxe / dedochthai tois nomothetais*). There are ten fourth-century *nomoi* preserved on stone from Athens, and all conform to this pattern (*SEG* 26.72; Stroud 1998; Agora Excavations, inv. no. I 7495 (unpublished); *IG* II² 140; *IG* II² 244; *IG* II³ 320; *IG* II³ 447; *IG* II³ 445; *IEleusis* 138; to these one should add *SEG* 52.104, cf. Canevaro 2013c). Three more inscriptions appear at first glance not to respect this distinction, but in fact conform to it (*IG* II³ 452, *IG* II³ 327, *IG* II³ 355). They order that, at the next session of the *nomothetai*, particular sums of money should be assigned to a particular magistrate for the purpose of funding particular honours, so they do not constitute a general rule with permanent validity. And yet the allocation of the funds of the city was regulated by a *nomos*, the *merismos* (allocation of the

budget). Because no *psephisma* was more binding than a *nomos*, the only legitimate way to change the allocation was through a *nomos*.

The complex procedure of *nomothesia* appears to have discouraged frivolous legislation: inscriptions preserve around 800 decrees for the fourth century BCE, but only 10 laws. On the other hand, this difference can be explained in two ways. First, the enactment of general permanent rules would have occurred much less often than *ad hoc* measures for the day-to-day administration of the *polis*; second, the epigraphic habit meant that honorary decrees were more frequently inscribed than other measures. A passage in Demosthenes' speech *Against Timocrates* (24.142) criticizes the Athenians for passing too many laws, claiming that they enacted laws almost ten times a year. Even allowing for rhetorical exaggeration, this passage provides evidence of numerous sessions of the *nomothetai*, each session considering multiple proposals. Other evidence for legislation in Athens comes from the speeches of the orators delivered in, or referring to, cases of *graphe paranomon* and *graphe nomon me epitedeion theinai*. There is evidence for thirty-five *graphe paranomon* cases in the fourth century BCE, but for only six *graphe nomon me epitedeion theinai* cases.^{xxii} Although the number of public actions against *nomoi* is much lower, they are more than the epigraphic evidence would lead us to expect. The Athenians clearly used the new *nomothesia* procedure quite often.

Despite the fact that the Athenians normally followed the correct procedures, such a large amount of legislation must have occasionally given rise to infractions. The case against the law of Timocrates (Dem. *Tim.*) is a notable example: in 354/3 Timocrates introduced a law that allowed public debtors who failed to pay what they owed on time to avoid prison by presenting sureties. Demosthenes wrote a speech for a certain Diodorus, who brought the *graphe nomon me epitedeion theinai* against the law, in which he alleges (with good evidence) that Timocrates did not respect the prescribed times for legislating: he was authorised by the Assembly to propose legislation, but then scheduled a session of *nomothetai* for the very next day (instead of waiting for the third Assembly meeting), and did not post his proposal at the monument of the Eponymous Heroes.^{xxiii} In this speech, as well as in the other extant speech for a *graphe nomon me epitedeion theinai*, Demosthenes' *Against Leptines*, the prosecutors paint a picture of unscrupulous politicians enacting more laws than decrees, not paying any attention to maintaining the coherence of the legal system, and bypassing the correct procedures. One should not take their statements at face value: these are prosecution speeches against new laws and their proposers, not the statements of an impartial source. The picture would be very different if we had the speeches made by those defending the laws, or the speeches delivered by the proposers when they first introduced their bills. As we have seen, the epigraphic evidence shows that *nomoi* were normally passed in accordance with the correct procedures, and that the volume of new legislation was significant but not excessive. In fact, the speeches *Against Timocrates* and *Against Leptines* are themselves evidence that when the correct procedures were not followed, the violation of the law was detected and prosecuted.

The main argument used by Demosthenes against a new law is that it contradicts previous laws, which the defendant failed to repeal before enacting his own law (e.g. Dem. 24.142). Often the argument is even broader, showing that the new law contradicts the general spirit of the laws of the city. This view is predicated on the assumption that the laws of Athens were rationally organized and coherent partly through the conscious intention of the original lawgiver and partly as a result of the *nomothesia* procedure that preserved this coherence. It is clear that the consistency and coherence of the legal system remained a goal of the Athenian democracy

because at some point in the fourth century BCE the Athenians created an additional procedure that assigned to specific magistrates the task of investigating the existing laws and identifying contradictions between statutes. These contradictions had to be submitted to the *nomothetai*, who would choose one provision against the other and restore the consistency of the laws (Dem. 20.91 and Aeschin. 3.38-9).^{xxiv} Inscriptions also provide evidence for this concern about consistency: e.g. the law of Nicophon (*SEG* 26.72, ll. 55-6) prescribes that the enactments that contradict the new law should be physically destroyed.

The new legislative procedures gave the *demos* the power to enact new laws whenever necessary and appropriate throughout the fourth century. At the same time, the new procedures helped to preserve the consistency of the laws of the city and to protect them against hasty and ill-considered legal changes. They provided clear rules of change and procedures for judicial review of new laws, at the same time banning retroactive legislation and securing a degree of stability for the legal system.

These procedures did not however survive the Athenian defeat in the *Lamian War* (322 BCE).^{xxv} It was probably *Antipater* who dissolved the lawcourts and abolished these procedures. Later *Demetrius of Phalerum* styled himself *nomothetes* in the tradition of the archaic lawgivers, and prevented the *demos* from making laws through the creation of *nomophylakes* (guardians of the law) who could block legislation in the Assembly and in the Council.^{xxvi} When Athens was 'freed' by *Demetrius Poliorcetes* in 307 (Diod. Sic. 20.45.5, 46.3), in order to restore the democratic constitution the Athenians appointed *nomothetai*, and yet these were not the normal panels of *nomothetai* typical of the fourth-century procedure, but rather a specially appointed board whose role was akin to that of the *nomothetai* of the late fifth century, and which was closely linked with Demetrius.^{xxvii} There is no evidence for *nomothetai* in Athens after Demetrius' expulsion in 301. It is likely that after 301 the Athenians passed laws in the same way as they passed decrees: through a simple vote of the Assembly.

Evidence for lawmaking beyond Athens

Despite the lack of a specific procedure of *nomothesia* to enact *nomoi* (as opposed to *psephismata*) in Athens from the third century on, the Athenians still preserved the view that *nomoi* were general permanent rules whereas *psephismata* were *ad hoc* measures. Magistrates and politicians were regularly praised in Athens for behaving in accordance with both the *nomoi* and the *psephismata* of the city (e.g. *IG* II² 404; 674; 776; 1006; 1028; *Agora* 16.261 l. 1), and the distinction between the two is even found in the language of by-laws passed by private associations, which tend to refer to general norms as *nomoi* (e.g. *IG* II² 1275 ll. 12-17). Because this distinction is found even in the absence of distinct procedures, one must be careful not to assume that a community had a separate procedure for enacting laws as at Athens simply because their documents contain the different terms *nomos* and *psephisma*. Thus, for instance, the mention in *IG* XII 8, 51 ll. 2-6 (II c. BCE) of both terms cannot be taken by itself to indicate the existence in Imbros of separate procedures for enacting laws and decrees and of a clear hierarchy between the two (cf. also e.g. *I.Kaunos* 19, *IG* XII 7, 406). But it is evidence that the Imbrians had a general notion of the different meanings of *nomos* and *psephisma*.^{xxviii}

In the same way, evidence for procedures akin to the Athenian *graphe paranomon* in a community does not necessarily indicate that *nomoi* and *psephismata* were enacted by different procedures in that community, and were entirely distinct. Such

procedures are attested for instance in a decree in honour of foreign judges sent by Heracleia to Demetrias (*SEG* 23.405, I/II c. CE): their job was to give a verdict about a decree that had been indicted as *paranomon* – of course, in this case, the charge of illegality was decided not by popular judges, but by *foreign judges* (cf. also Polyb. 28.7.1-15). Another decree from Mylasa (*I.Labraunda* 56 ll. 2-3, early Imperial) speaks of *dikai* arising from a *paranomon* decree. This evidence shows that judicial review of measures passed by the *polis* was widespread in the Greek world and that a concern for the consistency and coherence of legal measures was also common. But it is unclear whether these cases presuppose the existence of a formal hierarchy between *nomoi* and *psephismata*. It is more likely that these procedures were similar to the Athenian *graphe paranomon* in the fifth century BCE, by which *psephismata* are ‘contrary to the law’ if they contradict existing *psephismata* that have not been repealed. This is in fact the situation envisioned in four Hellenistic decrees from Magnesia on the Meander (*I.Magnesia* 92a ll. 13-14; 92b ll. 18-19; 94 ll. 12-13; *I.Priene* 61 ll. 30-31; III/II c. BCE), which state that if a previous decree is inconsistent with the one now enacted, that should make the previous decree invalid.^{xxix}

Where a clear hierarchy of enactments existed, the higher authority of laws was enforced in a variety of ways.^{xxx} One method was through entrenchment clauses (see above; see *IG* XII 2, 645b ll. 23-58 for a Hellenistic example). Another was through the appointment of special boards of lawmakers who gave laws to the city at particular, critical, junctures. This is the method prescribed in several royal *diagrammata*: for instance, *Alexander* in 334 sent a *diagramma* instructing the Chians to elect *nomographoi* who would write and correct (*grapsousi kai diorthousi*) the laws to effect a change in regime (*Chios* 32). The same arrangement was imposed between 306 and 302 by *Antigonos* on the Teans and the Lebedians (*Teos* 59): he ordered that the Teans and Lebedians should elect three *nomographoi* each, who should swear an oath and then write (that is, propose) the laws that they considered most expedient and fair to both cities for the new synoecized city within six months from their election. They should submit their proposals for laws to the *demos* for ratification. If a citizen wanted to propose a law, he had to submit it to the *nomographoi*, who would then submit it to the Assembly, together with those of their own making. The laws about which the *demos* disagreed had to be sent to Antigonos himself for review and approval.

Ptolemy I appears to have also imposed a similar board in his *diagramma* to Cyrene in 322/1 BCE (*SEG* 9.1), but in this case the special lawmakers were called *nomothetai*, not *nomographoi*.^{xxxi} The two *nomographoi* of the Aetolian League mentioned by Polyb. 13.1.2, as well as the third-century BCE *diorthotai* of Gonnus in Thessaly (*Gonnoi* 112), are also probably examples of specially appointed lawmakers. This form of *nomothesia* resembles that of the Athenian ‘special’ *nomothetai* of 403 and of 307 BCE, and its model is the action of archaic *nomothetai* such as Solon (see above). In other cases we find traces of standard (not special) procedures for separating enactments of a higher level from more regular enactments. These are comparable with, yet not identical to, Athenian *nomothesia* in the fourth century BCE. Sometimes the evidence shows that enactments meant to have higher validity were recorded in specific places: for instance in Aegiale on Amorogus laws were recorded on special tablets (*deltoi*, *IG* XII 7, 515; II c. BCE). Where this happened, it usually required further approval of the enactment by a specific board: for instance, a decree of Hermione that recognises rules about a festival must be written among the laws by *nomographoi* (*IG* IV 679; III/II c. BCE); a decree from Megalopolis recognising the

festival of Artemis Leucophryene at Magnesia requires *nomographoi* to record the decree among the laws (*I.Magnesia* 38, III/II c. BCE; cf. also *I.Magnesia* 28 of Kalydon, ca. 206 BCE); another decree from Samos (of Cephallenia) enacted for the same purpose is to be placed among the laws by the magistrates and the *nomographoi* (*I.Magnesia* 35, III/II c. BCE). The role played by the *nomographoi* in these inscriptions is performed in a decree from Kyme by a ‘nomothetic lawcourt’ (*nomothetikon dikasterion*, *I.Kyme* 12 with *SEG* 47.1660; II c. BCE) to which a designated introducer of the law (Erybothon) needs to submit the decree. At Demetrias this same role, that of making a decree into a law, is assigned in an inscription to the elected *stratego*i and to the *nomophylakes* (*IG* IX 2, 1109 ll. 91-3; II c. BCE).

One should however note that in all these cases the specific procedure, as well as the participation of the *nomographoi*, of the *nomophylakes*, or of the *nomothetikon dikasterion*, does not mean that decrees and laws are two entirely separate and incommensurable categories as they were at Athens. On the contrary, all these measures were enacted first by the Council or the Assembly as regular decrees, and were then ‘upgraded’ into laws by a special procedure. The distinction was not as stark as in Athens, where in the fourth century BCE *nomoi* and *psephismata* were enacted through entirely separate procedures, and laws could not be enacted as decrees, and vice versa. An inscription from Corcyra however may suggest a starker distinction between laws and decrees, with a more separate procedure. In this inscription, the participation of the city in the festival at Magnesia is approved by two separate enactments: the decree inscribed here, and a further law to be drafted by elected *nomothetai* who will then proceed to enter it among the (sacred) laws (*I.Magnesia* 44 ll. 34-6; III/II c. BCE).

Whatever the exact roles of these sessions of *nomographoi*, *nomophylakes*, *nomothetai*, of the *nomothetikon dikasterion*, they probably met at particular times and in accordance with precise procedures as they did at Athens: for instance, a decree from Cnidus about the participation of the city in the festival of Artemis Leucophryene at Magnesia states that the *nomographoi* shall introduce these decisions among the laws following the schedule specified in the laws (*I.Magnesia* 56 ll. 31-3). And two decrees, one of the Acarnanian League (*IG* IX I² 2, 583 ll. 75-7; 216 BCE) and one of Corcyra (*IG* IX I, 694 ll. 137-9; before 229 BCE) prescribe that changes to the laws should be made when specific sessions take place (respectively, a *nomothesia* session, and a *diorthosis ton nomon* session, conducted by *diorthotores*). In all these different *poleis*, the hierarchy between measures, the different procedures to enact them, and the bodies in charge of proposing and approving them, were set out by particular laws.

DISCUSSION OF THE LITERATURE

The study of Athenian lawmaking throughout the Archaic and Classical age (*nomothesia*) has been a popular one, and it is impossible in this context to provide a full account of the history of the study of this subject. This section will provide only a few references to influential works, starting with diachronic accounts of the development of Athenian democracy and laws that are particularly concerned with legislation. It will then proceed to discuss particular works on specific aspects of Athenian and Greek legislative practices.

Many scholars believe that at the end of the fifth century, with the revision of the laws and the creation of the *nomothetai*, Athens moved from a radical democracy where

the people in the Assembly were in charge of legislation to a more moderate regime founded on the rule of law, where legislation resided with a separate body, often identified with a special session of judges who had sworn the Judicial Oath. This point of view, with different emphases and in different frameworks, has been often stated, and its most influential formulation is to be found in Ostwald 1986. Ostwald does not concentrate only on procedural matters, and paints a wider picture of the intellectual and institutional context of Athenian democracy's passage 'from popular sovereignty to the sovereignty of law'. Against this reconstruction, Sealey 1987 stresses the continuity of Athenian conceptions of the rule of law, which is, in his opinion, what in fact fourth-century BCE Athenians intended by democracy. He uses legislative practices as an example among others of such continuity. Neither author focuses specifically on legislative practices, although these play a considerable role in their arguments.

Particularly important for defining the continuity of democratic ideology and institutions as a constant attempt to achieve both democracy and the rule of law is Harris 2006, in particular the essay 'Solon and the Spirit of the Law in Archaic and Classical Greece'. This essay discusses Archaic Greek lawgiving and traces back to Solon a consistent conception of the rule of law that informs institutional development in various aspects of the running of the Greek *poleis* in the following centuries, and in particular points out how Archaic lawmaking separated legislation from administration, and intended its activity as a bulwark against tyranny. In particular Harris builds on Lewis 1997 to highlight the role of entrenchment clauses in early legislation down to the 5th century, and stresses the importance of distributing power among various bodies of officials, as well as securing their accountability. Koerner 1993 and van Effenterre-Ruzé 1994-1995 are extensive collections of archaic laws, and Rhodes-Leão 2015 is a new and up-to-date collection of the fragments of Solon's laws.

Much work has been done in the last fifty years on the more technical aspects of Athenian legislative procedure, yet historians have often relied on sources, like the documents in the speeches of the orators, that should not be considered reliable (Canevaro 2013a). The procedures *graphe paranomon* and *graphe nomon me epitedeion theinai* have been studied extensively in their most juridical aspects in Wolff 1970. His explanation of these procedures in terms of *Normenkontrolle* has been contextualized in the overall political system by Hansen 1974. Hansen reads these procedures as examples of judicial review of legislation. The revision of the 'code' of laws at the end of the fifth-century has been surveyed in many articles, and no consensus has been reached (due, probably, to the use of unreliable documents as key evidence, see Canevaro- Harris 2012). Some recent works on these topics are Joyce 2008, Shear 2011 and Carawan 2013. A series of excellent contributions by Hansen (1983, 161-205) has however at least successfully defined the distinction between *nomoi* (laws) and *psephismata* (decrees) instituted at the end of the 5th century.

Fourth-century *nomothesia* has also been the object of much scholarship, with the most important works being MacDowell 1975, who first believed in a development of the procedure also in the 4th century, Hansen 1985 who tried to provide a unified account of 4th century practices, and Rhodes 1985, who corrects MacDowell and Hansen in many respects. The most up-to-date discussions of these issues, which present a new reconstruction of the procedures (and also reject some spurious documents) is Canevaro 2013b. Canevaro 2015 provides a general overview of the development of Athenian legislative procedures from the Archaic period to the late-

fourth century. Canevaro 2013c follows the development of the procedures into the early-Hellenistic period.

There are no comprehensive studies of the procedures of lawmaking outside Athens. Some discussion of such procedures can be found in Rhodes with Lewis 1997, 497-9 and Velissaropoulos-Karakostas 2011, 49-109. Habicht 2008 discusses the extra-Athenian evidence for judicial review and *graphe paranomon*.

BIBLIOGRAPHY

- Canevaro, M. *The Documents in the Attic Orators: Laws and Decrees in the Public Speeches of the Demosthenic corpus*. Oxford University Press: Oxford, 2013a.
- Canevaro, M. "Nomothesia in Classical Athens: what sources should we believe?" *Classical Quarterly* 63/1 (2013b): 1-26.
- Canevaro, M. "The twilight of *nomothesia*. Legislation in early-Hellenistic Athens (322-301)." *Dike* 14, 2011 (2013c): 55-85.
- Canevaro, M. "Making and changing laws in ancient Athens." In *Oxford Handbook of Ancient Greek Law*, eds. E.M. Harris and M. Canevaro. Oxford: Oxford University Press, 2016 (online 2015).
- Canevaro, M., and E.M. Harris. "The documents in Andocides' *On the Mysteries*." *Classical Quarterly* 62/1 (2012): 98-129.
- Carawan, E. (2013). *The Athenian Amnesty and Reconstructing the Law*. Oxford: Oxford University Press, 2013.
- Habicht, C. "Judicial control of the legislature in Greek states." *Studi ellenistici* 20 (2008): 17-23.
- Hansen, M.H. *The Sovereignty of the People's Court in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals*. Odense: University Press of Southern Denmark, 1974.
- Hansen, M. H. *The Athenian Ecclesia: A Collection of Articles 1976-1983*. Copenhagen: Museum Tusulanum Press, 1983.
- Hansen, M.H. "Athenian *nomothesia*", *Greek Roman and Byzantine Studies* 26 (1985): 345-371.
- Harris, E.M. *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics*. Cambridge: Cambridge University Press, 2006.
- Hölkeskamp, K.-J. *Schiedsrichter, Gesetzgeber und Gesetzgebung im archaischen Griechenland*. Stuttgart: Steiner Verlag, 1999.
- Joyce, C. J. "The Athenian amnesty and the scrutiny of 403." *Classical Quarterly* 58 (2008): 507-18.
- Koerner, R. *Inchriftliche Gesetzestexte der frühen griechischen Polis*. Köln: Böhlau, 1993.
- Lewis, D. M. "Entrenchment clauses in Attic decrees." In *Selected Papers in Greek and Near Eastern History*, ed. P.J. Rhodes. Cambridge: Cambridge University Press, 1997: 136-49.
- MacDowell, D.M. "Law-making at Athens in the fourth century B.C." *Journal of Hellenic Studies* 95 (1975): 62-7.
- Ostwald, M. *From Popular Sovereignty to the Sovereignty of Law*. Berkeley – Los Angeles: University of California Press, 1986.
- Rhodes, P. J. "Nomothesia in fourth-century Athens." *Classical Quarterly* 35 (1985): 55-60.
- Rhodes, P. J. and D. M. Lewis. *The Decrees of the Greek states*. Oxford: Oxford University Press, 1997.

Rhodes, P.J. and D. F. Leão. *The Laws of Solon. A New Edition with Introduction, Translation and Commentary*. London: I.B. Tauris, 2015.

Sealey, R. *The Athenian Republic: Democracy or the Rule of law?* Philadelphia – London: Penn State University Press, 1987.

Shear, J. *Polis and Revolution: Responding to Oligarchy in Classical Athens*. Cambridge: Cambridge University Press, 2011.

van Effenterre, H. and F. Ruzé. *Nomima. Recueil d'inscriptions politiques et juridiques de l'archaïsme grec*. Rome: Ecole française de Rome, 1994-1995.

Velissaropoulos-Karakostas, J. *Droit grec d'Alexandre à Auguste: 323 av. J.-C.-14 ap. J.-C.: personnes, biens, justice*. Paris: De Boccard, 2011

Wolff, Hans J. *'Normenkontrolle' und Gesetzesbegriff in der athenischen Demokratie. Untersuchungen zur graphie paranomon*. Heidelberg: Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil. Hist. Klasse 1969, 1970.

NOTES

ⁱ Koerner 1993, no. 90 = van Effenterre-Ruzé 1994-5, no. 81. Koerner 1993 and van Effenterre-Ruzé 1994-5 are the two standard collections of Archaic Greek laws, and will be used throughout this section.

ⁱⁱ See e.g. Rhodes- Leão 2015, 6.

ⁱⁱⁱ Against any understanding of Archaic legislation as 'codification' see Hölkeskamp 1999.

^{iv} Hölkeskamp 1999: 263–264.

^v For these anti-tyrannical concerns in Archaic laws and the methods to avoid concentration of power see Harris 2006, 3-39, with plenty of examples.

^{vi} See now Rhodes-Leão 2015 for a collection of the evidence for Solon's law that takes into account the most recent scholarship.

^{vii} Rhodes- Leão 2015, 2.

^{viii} See Harris 2006, 11-12 for more examples.

^{ix} On entrenchment clauses and their function see Lewis 1997, 136-49 and Harris 2006, 22-5.

^x See Canevaro 2015 for a more extensive discussion.

^{xi} See Canevaro 2015 for more sources and more evidence.

^{xii} For discussion of *graphie paranomon* see Wolff 1970 and Hansen 1974. See **graphie** for further information on Athenian public charges.

^{xiii} The scholarship on the democratic restorations is enormous. See in particular Joyce 2008, Shear 2011, Carawan 2013, and Canevaro-Harris 2012: 110-16.

^{xiv} For the sources, and the technicalities of this procedure, see Canevaro-Harris 2012, 110-16.

^{xv} The documents inserted in the section are however forgeries and one needs to rely on the orator's paraphrase. For a discussion of the documents and of Andocides' narrative see Canevaro-Harris 2012.

^{xvi} This distinction has been studied and tested in Hansen 1983, 161-205.

^{xvii} See Canevaro-Harris 2012, 117-19 and Canevaro 2013a, 145-150.

^{xviii} On the law of Diocles see Canevaro 2013a, 121-7.

^{xix} For the attribution of the new *nomothesia* procedures to the special *nomothetai* of 403 see Canevaro 2015.

^{xx} Dem. *Tim.* contains documents that purport to be the actual laws on *nomothesia*, and have been the basis of most scholarly reconstructions of the procedure (most notably MacDowell 1975; Rhodes 1985; Hansen 1985). Canevaro 2013b shows that

these documents are later forgeries and unreliable, and the reconstruction provided here follows that offered in this study.

^{xxi} Hansen 1983, 179-205 shows that the only derogations to this rule are found in the years 340-38 right before and after the battle of Chaeroneia, when Athens was in fatal danger and therefore correct procedure was occasionally dropped.

^{xxii} See the catalogue of Hansen 1974.

^{xxiii} On this speech and the procedure see Canevaro 2013b.

^{xxiv} Dem. 20.91 attributes the task to specially elected commissioners, while Aeschin. 3.38-9 attributes it to the *thesmothetai*. It is unclear whether the task was transferred to them at some point (MacDowell 1975, 72 and Rhodes 1985: 60), or commissioners and *thesmothetai* worked together (Hansen 1985, 356).

^{xxv} For an account of the developments of *nomothesia* in the late fourth and early third centuries BCE, see Canevaro 2013c.

^{xxvi} See Canevaro 2013c, 66-9.

^{xxvii} See Canevaro 2013c, 69-79.

^{xxviii} See Rhodes with Lewis 1997, 498-9. Velissaropoulos-Karakostas 2011, I, 60-3 is too quick to assume that the mention of *nomoi* and *psephismata* can automatically be mapped into a distinction and hierarchy identical to that of fourth-century Athens.

^{xxix} On the *graphe paranomon* outside Athens see Habicht 2008.

^{xxx} See for discussions of different procedures Rhodes with Lewis 1997, 497-9 and Velissaropoulos-Karakostas 2011, I, 60-87.

^{xxxi} On the royal *diagrammata* see Velissaropoulos-Karakostas 2011, I, 63-6, Canevaro 2013c, 77-9 with further references.